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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000169

SIPDIS
HQ SOUTHCOM ALSO FOR POLAD
TREASURY FOR MKACZMAREK
NSC FOR DRESTREPO
NSC FOR LROSSELLO
USDOC FOR 4332 MAC/ITA/WH/JLAO
AMEMBASSY BRIDGETOWN PASS TO AMEMBASSY GRENADA
AMEMBASSY OTTAWA PASS TO AMCONSUL QUEBEC
AMEMBASSY BRASILIA PASS TO AMCONSUL RECIFE

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TAGS: ECON ECIN FIND EINT EINV ETRD KIPR VE

SUBJECT: DRAFT INTELLECTUAL PROPERTY LEGISLATION HAS AN UNCERTAIN FUTURE

REF: 09 CARACAS 902; 09 CARACAS 770

CLASSIFIED BY: DUDDY, AMBASSADOR, DOS, AMB; REASON: 1.4(B), (D)

¶1. (C) SUMMARY: On January 25, a legal consultant for the Venezuelan Chamber of Medicine (CAVEME) told EconOffs that an intellectual property reform drafted by Commerce Minister Eduardo Saman had "no chance" of being passed. Saman's draft law has raised concerns in the IPR legal community because it would substitute intellectual property rights for "concessions" granted by the Venezuelan government (GBRV) that could only be exploited locally for a one year period. Meanwhile, CAVEME has quietly proposed its own intellectual property legislation "written in Chavista language" to GBRV officials in order to undermine Saman's project. CAVEME representatives said that international pharmaceutical companies expect to have another profitable year in Venezuela, a market worth over USD 6 billion, provided that the GBRV does not institute new price controls. END SUMMARY.

¶2. (C) On January 25, CAVEME's legal consultant Fernando Allende (protect throughout) told EconOffs that a draft intellectual property law published on the Trademark and Patent Office (SAPI) website had "no chance" of being passed. The draft law, supposedly written by Commerce Minister Eduardo Saman, has generated concern in the IPR legal community because it would substitute intellectual property rights for "concessions" granted by the GBRV (Ref A,B). These concessions could only be exploited locally for a one year period and the GBRV could annul them at any time. In addition, the concessions could not be licensed, sold, or transferred. Since the Commerce Ministry drafted the legislation -and not the National Assembly or Executive-the proposal does not have official status and would be unconstitutional if approved, according to Allende.

PRESIDENT CHAVEZ PULLS SAMAN BACK IN ADVANCE OF NATIONAL ASSEMBLY ELECTIONS

¶3. (C) Allende said that neither the National Assembly nor President Chavez would move forward with Saman's draft because it would break Venezuela's Paris Convention obligations, discredit the GBRV internationally, and jeopardize Venezuela's campaign to join Mercosur: "There is a consensus that this project is a barbarity,"

Allende said. He noted that Commerce Minister Eduardo Saman—who also heads the Consumer Protection Agency (INDEPABIS)—is a former pharmacist and avowed Marxist who has never believed in intellectual property or markets. Allende remarked that Chavez often uses Saman to scare opponents with his extreme proposals—like the draft intellectual property reform—but Chavez is likely to pull Saman back before the National Assembly elections in September 2010, "like a dog on a leash."

PHARMACEUTICAL COMPANIES ARE A "NECESSARY EVIL"

¶4. (C) Meanwhile, CAVEME representatives have been working behind the scenes to weaken Saman's draft by developing an alternative proposal "written in Chavista language." CAVEME has drafted a proposal with the help of Doctor Hildegard Rondon de Sanso, the well-connected mother-in-law of PDVSA President Rafael Ramirez, that "destroys Saman's draft." Allende explained that CAVEME has been careful to avoid open confrontation with the GBRV over patents because Venezuela is a large pharmaceutical market and patented products represent a fraction of total sales: the total value of pharmaceutical sales in Venezuela is over USD 6 billion per year, while a small number of patented pharmaceutical products in the Venezuelan market have an estimated annual value of just USD 100 million. Stefano Zampa, CAVEME's Executive President, said that the GBRV considers pharmaceutical companies a "necessary evil"

CARACAS 00000169 002 OF 002

because the government does not have the pharma-chemical industry capable of meeting demand and quality standards. He added that international pharmaceutical companies expect to have another good year in Venezuela—as long as the government does not introduce new price controls.

LEGAL CONFUSION SURROUNDS INTELLECTUAL PROPERTY RIGHTS REGIME

¶5. (SBU) Uncertainty has surrounded Venezuela's Intellectual property rights regime since the GBRV withdrew from the Andean Community in April 2006. Following Venezuela's withdrawal, it was unclear whether the Andean Community's Decision 486 or Venezuela's 1955 Industrial Property Law would regulate intellectual property rights. In September 2008, SAPI published an official notice upholding the 1955 law, which prohibits patents for pharmaceutical products and reduces owner rights—in violation of several articles of the Paris Convention and the TRIPS WTO agreement, according to Allende. CAVEME has twice asked the Supreme Court (TSJ) to clarify the legal issues surrounding the intellectual property rights regime: in the first case, to decide whether Andean Decision 486 or the 1955 Intellectual Property law regulated intellectual property rights; in the second, to reconcile the contradictions between the 1955 law and Venezuela's international obligations under the Paris Convention and the WTO. The Supreme Court has not issued a ruling in either case. Meanwhile, Venezuela has not granted a pharmaceutical patent since 2002, according to a report by the Pharmaceutical Research and Manufacturers of America.

¶6. (C) COMMENT: Legal experts who have compared the GBRV's proposed legal reforms to equivalent Cuban laws note that Saman's draft is far more ideologically extreme than its Cuban counterpart. From that perspective, the death of Saman's intellectual property reform is potentially good news for patent holders in Venezuela, who would likely welcome its failure with great relief. For the moment, it appears that the GBRV has not found a way to eliminate patents and restructure its intellectual property rights regime without violating its international obligations and jeopardizing its entry into Mercosur. END COMMENT.

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